

Application No.: 10/772,101
Filing Date: February 4, 2004

REMARKS

The foregoing amendments and the following remarks are responsive to the Office Action. Claims 111-149 were pending in this application. Claims 1-110 had been previously canceled. Claims 111-149 are canceled herein without prejudice. Claims 150-169 are added herein. Accordingly, Claims 150-169 are presented for further consideration.

This Office Action response is accompanied by a Request for Continued Examination. Applicant respectfully requests the Examiner to reconsider the present application in view of the foregoing amendments and the following comments.

Claim Rejections under 35 U.S.C. §112

The Examiner rejects Claims 111-149 under 35 U.S.C. §112, first paragraph, as failing to comply with the written description requirement. According to the Examiner, claim limitations describing the valve assembly as having an axial length that permits the assembly to extend from the cardiac annulus into the ascending aorta is not properly supported by the specification.

Applicant respectfully disagrees and traverses this 35 U.S.C. §112, first paragraph rejection. In light of the cancelation of Claims 111-149, this rejection is now moot. However, because at least some of the newly added claims (Claims 150-169) include similar claim limitations as the previously pending claims, various aspects of the specification and figures are discussed herein in order to clarify the record.

The U.S. Court of Appeals for the Federal Circuit has held that application drawings alone can be sufficient to adequately support claimed subject matter. Vas-Cath Inc. v. Mahurkar, 935 F.2d 1555, 1563 (1991). Further, in In re Heinle, the Court of Customs and Patent Appeals distinguished a previous case, In re Olson, 212 F.2d 590 (1954), which had refused to permit reliance on patent drawings of a hydraulic hose coupling containing ball valves to support claim limitations relating to certain dimensions. In re Heinle, 145 U.S.P.Q. 131, 136 (1965). The Heinle court, noting the inexact nature of the limitation at issue, reasoned that the claim required “only an approximation” of what was illustrated in the application figures. As is Heinle, the nature of the limitations related to this rejection, namely the axial extent of the assembly is generally illustrated in, and thus, adequately supported by, the application figures. See, inter alia,

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Figure Nos. 21, 69 and 70 of the present application, which illustrate various embodiments of a valve assembly positioned within the anatomy.

In this regard, Applicant notes that the drawings illustrate a valve assembly having an axial length that permits the assembly to extend from the native annulus into the ascending aorta. However, the axial extent of the assembly is not merely shown in the figures. Rather, it is also described in the specification. For example, with respect to the position of a valve assembly (e.g., as depicted in embodiment of Figures 66-70) relative to the native annulus, Paragraph [0159] of the specification recites, “[p]rosthesis 680 is positioned generally about the valve annulus 684 and the coronary ostia 686, with the assistance of radiographic markers.” (emphasis added) In addition, with respect to the position of a valve assembly relative to the ascending aorta, Paragraph [0119] of the specification recites,

“The support according to FIG. 19 is intended to be used, as appears in FIG. 21, when the body passage with the valve to be replaced, in particular the aorta, has a variation in diameter at the approach to the valve. The length of wires 105 connecting portions 103 and 120 is provided so that after implantation, portion 120 is situated in a non-dilated region of said body passage, and this portion 120 is provided so as to engage the wall of the passage.”

Claim Rejections under 35 U.S.C. §102

In the Office Action, Claims 111-116, 118-124, 127-131, 133-146, 148 and 149 stand rejected under 35 U.S.C. §102(e) as being anticipated by U.S. Publication No. 2002/0151970 to Garrison et al. (“Garrison”). Applicant respectfully disagrees with the Examiner’s characterization of Garrison in view of the rejected claims, and Applicant respectfully traverses the rejection of these claims. However, as discussed, Claims 111-149 are canceled without prejudice herein. Accordingly, the rejection of these claims is now moot. Applicant reserves the right to pursue claims similar to the original claims or other previously presented versions of the claims in a continuing application.

Claim Rejections under 35 U.S.C. §103

In the Office Action, Claim 117 stands rejected under 35 U.S.C. §103(a) as being unpatentable over Garrison in view of U.S. Publication No. 2002/0099439 to Schwartz et al. Further, Claims 125, 132 and 147 stand rejected under 35 U.S.C. §103(a) as being unpatentable

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over Garrison in view of U.S. Patent No. 6,350,277 to Kocur.⁹ Finally, Claim 126 stands rejected over Garrison in view of U.S. Patent No. 6,299,637 to Shaolian et al.

Applicant respectfully disagrees with the Examiner's characterization of these references in view of the pending claims, and Applicant respectfully traverses all of these rejections. However, as discussed, Claims 117, 125, 126, 132 and 147 are canceled without prejudice herein. Accordingly, the rejection of these claims is now moot. As noted above, Applicant reserves the right to pursue claims similar to the original claims or other previously presented versions of the claims in a continuing application.

New Claims

As discussed above and reflected in the listing of claims herein, Applicant has added new Claims 150-169. No new matter is added by these new claims.

Applicant submits that these newly presented claims are novel and non-obvious over Garrison and the other cited references, as such references, either alone or in combination with one another, do not disclose one or more limitations of new Claims 150-169. For example, Garrison fails to teach or suggest a prosthetic cardiac valve assembly having a valve support that is configured to generally extend from the native annulus of an aortic valve into the ascending aorta, past the coronary ostia, as disclosed in the present application and currently claimed herein. As illustrated in Figure 20 of Garrison reproduced below, no portion of the prosthesis extends past the location of the coronary ostia. Garrison and the other references cited in the Office Action also lack one or more other limitations of the claims added herein. Accordingly, for at least these reasons, Applicant submits that Claims 150-169 are novel and non-obvious, and thus, are in condition for allowance.

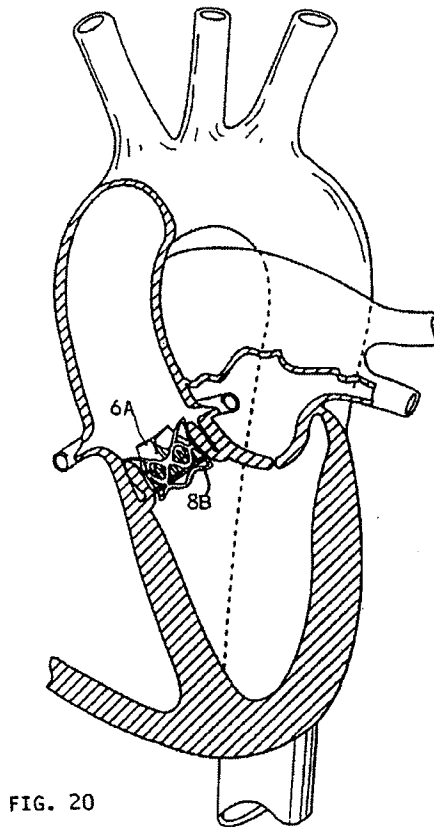


FIG. 20

Figure 20 of Garrison

No Disclaimers or Disavowals

Although the present communication may include alterations to the subject application or claims, or characterizations of claim scope or referenced art, the Applicant is not conceding in this application that previously pending claims are not patentable over the cited references. Rather, any alterations or characterizations are being made to facilitate expeditious prosecution of this application. The Applicant reserves the right to pursue at a later date any previously pending or other broader or narrower claims that capture any subject matter supported by the present disclosure, including subject matter found to be specifically disclaimed herein or by any prior prosecution. Accordingly, reviewers of this or any parent, child or related prosecution history shall not reasonably infer that the Applicant has made any disclaimers or disavowals of any subject matter supported by the present application.

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Co-Pending Applications of Assignee

Applicant provides the following table to aid the Examiner during prosecution. The following U.S. patent applications are related to the above-captioned application in that they have at least one listed inventor and/or assignee in common with the above-captioned application:

<i>Pat. Appl. No.</i>	<i>Attorney Docket No.</i>	<i>Title</i>	<i>Filing Date</i>	<i>Status</i>
10/130,355		DEVICE FOR REPLACING A CARDIAC VALVE BY PERCUTANEOUS ROUTE	Nov. 26, 2002	Issued (6,830,584)
10/412,634	CVALVE.006A	PROSTHETIC VALVE FOR TRANSLUMINAL DELIVERY	Apr. 10, 2003	Issued (7,018,406)
11/352,614	CVALVE.006C1	PROSTHETIC VALVE FOR TRANSLUMINAL DELIVERY	Feb. 13, 2006	Issued (7,329,278)
11/434,506	CVALVE.006CP2	NON-CYLINDRICAL PROSTHETIC VALVE SYSTEM FOR TRANSLUMINAL DELIVERY	May 15, 2006	Pending
12/029,031	CVALVE.006C1C1	PROSTHETIC VALVE FOR TRANSLUMINAL DELIVERY	Feb. 11, 2008	Pending
12/348,892	CVALVE.006C1C1C	PROSTHETIC VALVE FOR TRANSLUMINAL DELIVERY	Jan. 5, 2009	Pending
11/128,826	CVALVE.046A	HEART VALVE PROSTHESIS AND METHODS OF MANUFACTURE AND USE	May 13, 2005	Pending
11/433,296	CVALVE.046CP1	HEART VALVE PROSTHESIS AND METHODS OF MANUFACTURE AND USE	May 12, 2006	Pending
10/482,270	CVALVE.013APC	KIT ENABLING A PROSTHETIC VALVE TO BE PLACED IN A BODY ENABLING A PROSTHETIC VALVE TO BE PUT INTO PLACE IN A DUCT IN THE BODY	Jul. 6, 2004	Issued (7,252,682)
11/829,682	CVALVE.013C1	ASSEMBLY FOR PLACING A PROSTHETIC VALVE IN A DUCT IN THE BODY	Jul. 27, 2007	Pending
10/484,865	CVALVE.014APC	ASSEMBLY FOR SETTING A VALVE PROSTHESIS IN A CORPOREAL DUCT	Sep. 22, 2004	Pending
11/488,395	CVALVE.027A	SYSTEMS AND METHODS FOR LOADING A PROSTHESIS ONTO A MINIMALLY INVASIVE DELIVERY SYSTEM	Jul. 18, 2006	Pending
11/952,080	CVALVE.041A	SYSTEM AND METHOD FOR TRANSAPICAL DELIVERY OF AN ANNULUS ANCHORED SELF-EXPANDING VALVE	Dec. 6, 2007	Pending

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The above table is not indented to be inclusive. Additional applications and patents that are related to the above-captioned application (in that they have at least one listed inventor or assignee) may be listed in Information Disclosure Statements submitted herewith or previously filed. Copies of these patent applications, and pending claims, including any office actions, allowances and/or other communications, are available through PAIR. However, if the Examiner so requests, Applicant will be happy to provide the Examiner with copies of any applications, pending claims, office actions, allowances, communications or any other documents, at any time.

Further, Applicant notes for the record that the claims of the present application are different and may be broader in scope than the claims in any related patent or application. To the extent that any statements made in a related case (such as amendments or characterizations regarding the scope of a claim or prior art) could be construed as a disclaimer of any subject matter supported by the present disclosure, Applicant rescinds and retracts such disclaimer. Accordingly, any listed or referenced prior art may need to be re-visited. Further, any objections or rejections made by the Examiner in the issued and allowed cases identified above may need to be re-visited.

Applicant is not conceding that the previously pending claims are not patentable over the art of record. Applicant reserves the right to later pursue any previously pending or other broader or narrower claims that capture any subject matter supported by the present disclosure, including subject matter found to be specifically disclaimed herein or by any prior prosecution. Accordingly, reviewers of this or any parent, child or related prosecution history shall not reasonably infer that the Applicant has made any disclaimers or disavowals of any subject matter supported by the present application.

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CONCLUSION

In view of the foregoing amendments and remarks, Applicant respectfully submits that the claims are now in condition for allowance. Accordingly, Applicant respectfully requests reconsideration of the claims in light of the amendments and the above remarks. As noted above, this amendment and response is being filed with a Request for Continued Examination.

Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: March 5, 2009

By: Andrew H. Simpson
Andrew H. Simpson
Registration No. 31,469
Attorney of Record
Customer No. 20995
(949) 760-0404

6749178
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